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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,538	07/21/2003	Grant Pierce	81190-2202	3896

7590 07/11/2007
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EXAMINER

VU, JAKE MINH

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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07/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/622,538	Applicant(s) PIERCE ET AL.	
	Examiner Jake M. Vu	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9 and 11-14 is/are pending in the application.
 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 11, 12 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of Applicant's Amendment filed on 04/30/2007.

- Claim 9 has been amended.
- Claims 9 and 11-14 are pending in the instant application.
- Claim 13 had been previously withdrawn from consideration.

Claim Rejections - 35 USC § 102

Claims 9, 11, 12, and 14 rejected under 35 U.S.C. 102(b) as being anticipated by WEISS et al (US 4,918,104) **are withdrawn** in view of Applicant's Amendment filed on 04/30/2007.

However, upon further consideration, a new ground(s) of rejection is made as discussed below.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 11, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by WEISS et al (US 4,918,104) in light of KODALI (US 6,303,803) and SILVA (Cholesterol: A marker for the presence of animal material in feed: January 17, 2003. http://www.aafco.org/FDA_AAFCO_BSE_Workshop_Jan_2003/tabid/81/Default.aspx).

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Applicant's claims are directed to a method of increasing uptake of omega-3 fatty acids in an animal comprising of: administering to an animal, which produces egg, a composition comprising of: 0.1-5% (w/w) of cholesterol and 0.1-25% of omega-fatty acid from a source such as deep-sea cold water fatty fish.

WEISS disclosed a method of increasing uptake of omega-3 fatty acids in an animal comprised of: administering to an animal, which produces egg (see Title and Abstract), a composition containing cholesterol from sources such as Menhaden fish oil, animal blend, soybean meal, gluten meal, etc. and a source of omega-fatty acid, such as Menhaden fish oil, which is a deep-sea cold water fatty fish (see col. 4, line 28-47).

WEISS does not disclose the percentage of cholesterol in the composition.

KODALI disclosed fish oil contains high amounts of cholesterol 500-800mg of cholesterol/100g, which is 0.5 - 0.8% (w/w). Thus, the concentration of cholesterol in a 10% fish oil diet can be as high as 0.08% (w/w) (see col. 1, line 30-36).

SILVA disclosed cholesterol could be found in high concentration in animal organ material and trace amounts in plants. For example beef brain contains 1422 mg cholesterol/85g, which is 1.67% (w/w) of cholesterol, while beef liver contains 301mg of cholesterol/85g, which is 0.35% (w/w) of cholesterol. Thus, the concentration of cholesterol in a 6% animal blend can range from 0.10% to 0.021%, respectively.

Thus, WEISS could inherently contain at least 0.1% of cholesterol (w/w).

Claims 9 is rejected under 35 U.S.C. 102(b) as being anticipated by FERRIER et al (alpha-Linolenic acid- and docosahexaenoic acid-enriched eggs from hens fed

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flaxseed: influence on blood lipids and platelet phospholipid fatty acids in humans. Am J Clin Nutr. 1995 Jul;62(1):81-6) in light of KODALI (US 6,303,803).

FERRIER teaches significant increases of omega-3 fatty acids were seen when volunteers consumed eggs containing high amount of omega-3 fatty acids.

KODALI disclosed eggs contain 5.2 g cholesterol/ 100 g, which is 5.2% (w/w).

Claims 9, 11, 12, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by GARG et al (Effect of dietary cholesterol and/or omega 3 fatty acids on lipid composition and delta 5-desaturase activity of rat liver microsomes. J Nutr. 1988 Jun;118(6):661-8).

Applicant's claims are directed to a method of increasing uptake of omega-3 fatty acids in an animal comprising of: administering to an animal, which produces egg, a composition comprising of: 0.1-5% (w/w) of cholesterol and 0.1-25% of omega-fatty acid from a source such as linseed oil.

GARG disclosed a method of increasing uptake of omega-3 fatty acids (see pg. 666, left column) in a rat comprised of: administering to an animal, such as a rat, a composition comprised of: 0.12% or 0.2% (w/w) of cholesterol (see pg. 662, right column) and 16% of omega-fatty acid from a source such as linseed oil (see pg. 663, Table 1).

Note, Applicant's claim limitation of "the animal produces an edible product such as an egg" can broadly read on a female rat producing ovum egg. Obviously, the rat's ovum egg can be edible.

Response to Arguments

Applicant argues that the fish oil cholesterol amount is 0.011% in a 10% fishmeal diet. The Examiner finds this argument, because as discussed above cholesterol are found in other component of the animal feed, such as fish oil, animal blend and plant products. Additionally the GARG reference indirectly disclosed that animal feed could contain 0.12% of cholesterol in a low cholesterol diet.

Applicant argues that the fishmeal can cause a fishy taste to the chicken. The Examiner finds this argument irrelevant since Applicant's source of omega-3 fatty acid can derive from fatty fish also.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

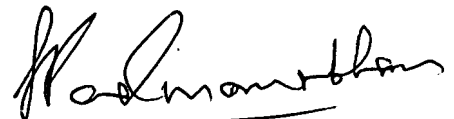
Telephonic Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jake M. Vu whose telephone number is (571) 272-8148. The examiner can normally be reached on Mon-Fri 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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**SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER**